

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

BRAD L. FRY,

Plaintiff,

vs.

**CAROLYN W. COLVIN,
Commissioner of Social Security,**

Defendant.

No. C13-2076

ORDER FOR REMAND

This matter comes before the Court on the Joint Motion of the Parties to Reverse and Remand and for Entry of Final Judgment (docket number 10) filed by the parties on May 20, 2014.

On November 12, 2010, Plaintiff Brad L. Fry filed an application for Title II disability insurance benefits. In his application, Fry alleged a disability onset date of May 21, 2010. His application was denied initially and upon reconsideration. On June 14, 2012, Fry appeared via video conference with counsel before Administrative Law Judge (“ALJ”) Tom L. Morris. In a decision dated July 12, 2012, the ALJ denied Fry’s claim. Fry appealed the decision. On September 23, 2013, the Appeals Council denied Fry’s request for review. Consequently, the ALJ’s July 12, 2012 decision was adopted as the Commissioner’s final decision.

On November 10, 2013, Fry timely filed a Complaint seeking judicial review of the ALJ’s decision.¹ The Commissioner filed an Answer on February 20, 2014. On May 20, 2014, the parties filed the instant joint motion to remand.

¹ On January 8, 2014, both parties consented to proceed before the undersigned in this matter pursuant to the provisions set forth in 28 U.S.C. § 636(c).

In their brief on the joint motion to remand, the parties assert that:

After careful review of the above-captioned case, agency counsel requested that the Appeals Council reconsider the Commissioner's decision. Upon review, the Appeals Council determined that remand was appropriate for further consideration of plaintiff's claim. Plaintiff, through counsel, agreed that remand was appropriate.

Memorandum in Support of Joint Motion of the Parties to Reverse and Remand and for Entry of Final Judgment (docket number 10-1) at 2. Thus, the parties state that "[u]pon receipt of the Court's remand order, the Appeals Council will vacate the ALJ's decision and remand this case to an ALJ."² On remand, the Appeals Council will instruct the ALJ to: (1) Reconsider the opinions of all treating, consultative examining, and non-examining doctors and fully explain the weight given to such opinions; (2) reconsider Fry's credibility in light of all the medical evidence of record; (3) reconsider Fry's residual functional capacity assessment; and (4) if necessary, obtain testimony from a vocational expert.³

Pursuant to 42 U.S.C. § 405(g):

The court shall have the power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing.

Id. Because the parties request a remand pursuant to sentence four of 42 U.S.C. § 405(g), the Court must conduct a plenary review of the record and provide a substantive ruling regarding the case. *Melkonyan v. Sullivan*, 501 U.S. 89, 98 (1991). The Court has reviewed the record in this matter and finds that the motion should be granted. Accordingly, the Court finds that this matter should be reversed and remanded to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) with directions to the

² Memorandum in Support of Joint Motion of the Parties to Reverse and Remand and for Entry of Final Judgment (docket number 10-1) at 2.

³ *Id.* at 2-3.

Appeals Council to vacate the ALJ's decision and remand this case to an ALJ with instructions to reconsider Fry's claim as discussed herein.

ORDER

IT IS THEREFORE ORDERED as follows:

1. The Joint Motion of the Parties to Reverse and Remand and For Entry of Final Judgment (docket number 10) filed by the parties is hereby **GRANTED**.
2. This case is hereby **REVERSED** and **REMANDED** to the Commissioner of Social Security pursuant to sentence four of 42 U.S.C. § 405(g), for further proceedings as discussed herein.

DATED this 22nd day of May, 2014.



JON STUART SCOLES
CHIEF MAGISTRATE JUDGE
NORTHERN DISTRICT OF IOWA